

REMARKS/ARGUMENTS

Favorable reconsideration of this application is respectfully requested.

Claims 1-45 are pending in this application.

The outstanding Official Action includes a provisional rejection of Claims 1-45 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-27 of copending Application Serial No. 10/647,309.

The rejection of Claims 1-45 under the judicially created doctrine of obviousness-type double patenting over Claims 1-27 of copending Application Serial No. 10/647,309 is traversed because the statement of the rejection at the bottom of page 2 of the outstanding Action improperly seeks to rely on the contents of the specification as if it were prior art. See MPEP § 804 noting the following:

When considering whether the invention defined in a claim of an application would have been an obvious variation of the invention defined in the claim of a patent, the disclosure of the patent may not be used as prior art. *General Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 1279, 23 USPQ2d 1839, 1846 (Fed. Cir. 1992).

Besides improper reliance on the specification of copending Application Serial No. 10/647,309, the outstanding Action fails to follow MPEP § 804 guidelines as to making clear:

(A) The differences between the inventions defined by the conflicting claims - a claim in the [copending Application] compared to a claim in the application; and

(B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue would have been an obvious variation of the invention defined in a claim in the [copending Application].

Accordingly, withdrawal of this rejection based upon obviousness-type-double patenting is respectfully requested.

It is noted that copending Application Serial No. 10/647,309 was published on May 20, 2004 as Publication No. 2004/0094887 and has a filing date of August 26, 2003.

Application No. 10/781,917
Reply to Office Action of 10/26/06

However, no rejection under 35 U.S.C. §102(e) has been applied in the outstanding Action, much less one in compliance with 37 CFR §1.104, which states that:

When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable.

As no further issues are believed to remain outstanding relative to this application, it is respectfully submitted that this application is clearly in condition for formal allowance, and an early and favorable action to that effect is, therefore, respectfully requested.

Respectfully submitted,

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